No Fear Act:

Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002

Training Module

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Agenda

- Overview of No Fear Act
- Equal Employment Opportunity (EEO) Discrimination Complaint Process
- Whistleblower Protection Act
- Freedom From Reprisal
- Links and Locations for additional information

Overview of No Fear Act

- Title: Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (effective 10/01/03)

1. Purpose
2. Parts of the No Fear Act
3. Policy on Discrimination

Purpose of Act

- **The Act requires that "Federal agencies be <u>accountable</u> for violations of antidiscrimination and whistleblower protection laws."**
- **The Act also requires that DON inform current employees, former employees and applicants for employment, of the rights and protections available under Federal antidiscrimination, whistleblower protection and retaliation laws.**

Three Parts of the No Fear Act

- **Three titles**:
  - Title I – General Provisions
  - Title II – Federal Employee Discrimination and Retaliation
  - Title III – EEO Complaint Data Disclosure

Policy

- **“A Federal agency may not discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation.**
- **Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b) (1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.**

What are Your Rights?

- **<u>Existing Rights Unchanged</u>**
  - Pursuant to section 205 of the No FEAR Act, neither the Act nor any notice issued in compliance with the Act, creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

EEO
Discrimination Complaint Process

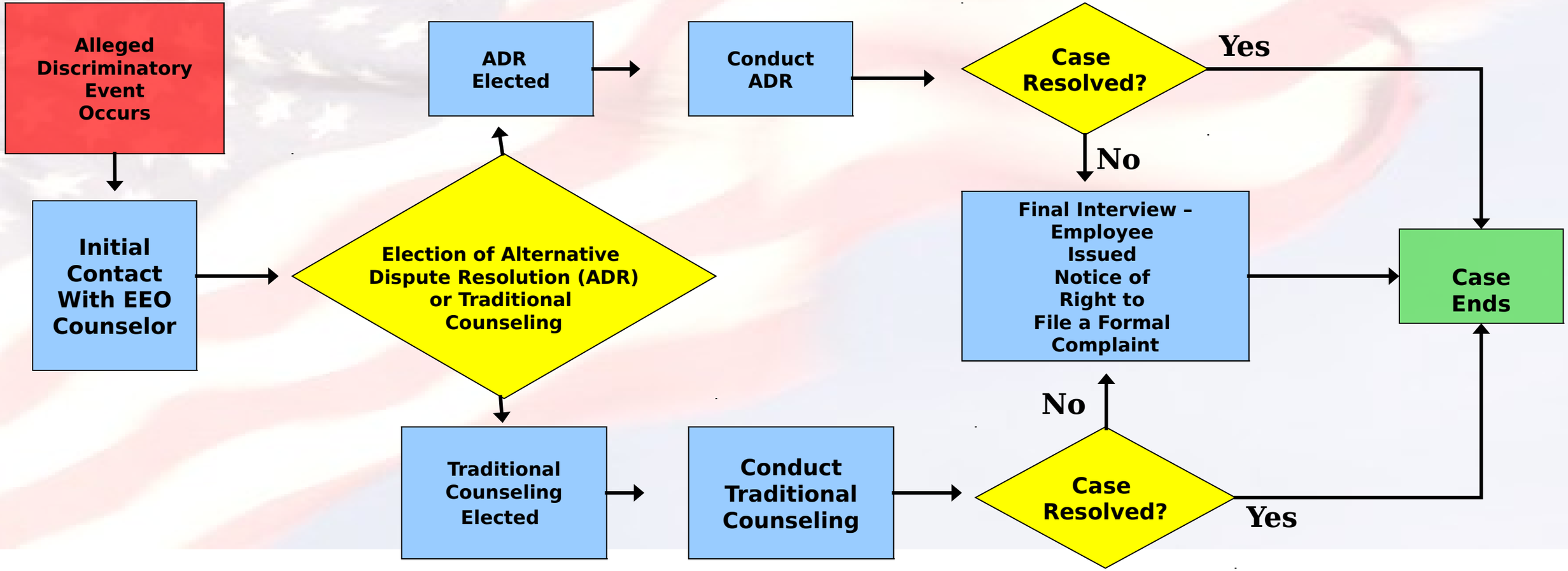
EEO Statutes

- **Title VII of the Civil Rights Act of 1964**
  - Prohibits discrimination based on race, color, religion, sex, and national origin.
- **Age Discrimination in Employment Act of 1967**
  - Prohibits discrimination on the basis of age (40 years and older).
- **The Rehabilitation Act of 1973**
  - Prohibits discrimination on the basis of mental and physical disability.
- **Equal Pay Act of 1963**
  - Prohibits sex-based wage discrimination.
- All statutes prohibit reprisal or retaliation against individuals exercising their rights under the statutes.

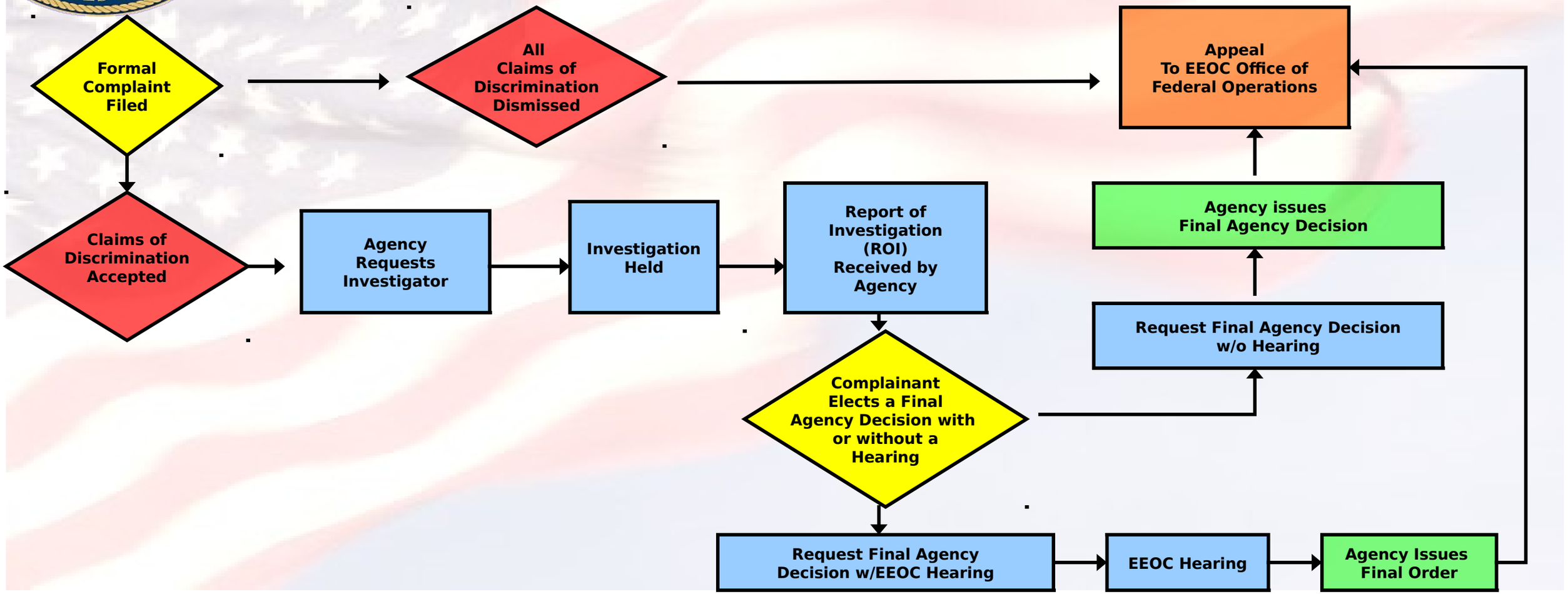
EEO Discrimination Complaints

- If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, age, disability or reprisal, you must contact a DON EEO Counselor:
  - Within 45 calendar days of the alleged discriminatory action; or,
  - In the case of a personnel action, within 45 calendar days of the effective date of the action.
- Every individual alleging discrimination must first go through the pre-complaint or counseling phase of the DON EEO discrimination complaint process.

PRE-COMPLAINT PROCESS



FORMAL PROCESS


Formal Complaint Filed
All Claims of Discrimination Dismissed
Appeal To EEOC Office of Federal Operations
Claims of Discrimination Accepted
Agency Requests Investigator
Investigation Held
Report of Investigation (ROI) Received by Agency
Agency issues Final Agency Decision
Request Final Agency Decision w/o Hearing
Complainant Elects a Final Agency Decision with or without a Hearing
Request Final Agency Decision w/EEOC Hearing
EEOC Hearing
Agency Issues Final Order

Other Circumstances

- **If you believe that you have been the victim of unlawful discrimination on the basis of age, you may either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action.**
- **If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.**

Who Do You Contact?

- Local EEO Office
  - Contact information can be found on official bulletin board.
- Office of Special Counsel
  - U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site — http://www.osc.gov

Whistleblower Protection Act

Whistleblower Protection Laws

- The Whistleblower Protection Act prohibits Federal agencies from retaliating against employees, former employees, or applicants for employment for whistle blowing. Whistleblower reprisal refers to the actual taking, failure to take, or threatened taking of a personnel action in retaliation for a protected disclosure of information that is reasonably believed to evidence:

  - violations of law, rule or regulation;
  - gross mismanagement;
  - gross waste of funds;
  - an abuse of authority;
  - a substantial and specific danger to public health or safety.

Whistleblower Protection Laws

- Generally, a protected disclosure can be to anyone in a position to correct the alleged wrong doing, except the wrongdoer. However, a disclosure is not protected, where the disclosure is specifically prohibited by law or is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, unless it is disclosed to the office of Special Counsel or the Inspector General.

- <u>The Whistleblower Protection Act does not require an employee to go through his or her Chain of Command.</u>

Whistleblower Protection Laws

- Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8).

- To report whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site: http://www.osc.gov.

Office of Special Counsel
Role in Whistleblower Protection

- The Office of Special Counsel (OSC) provides a secure channel through which current and former federal employees and applicants may make confidential disclosures.
- OSC evaluates the disclosures to determine whether there is a substantial likelihood that one of the conditions has been disclosed.
- If such a determination is made, OSC has the authority to require the head of the agency to investigate the matter.
- To make a disclosure contact:

  U.S. Office of Special Counsel
  1730 M Street, N.W., Suite 218
  Washington, DC 20036-4505

  Phone: (202) 254-3640

  Toll Free: 1-800-572-2249

  Hearing and Speech Disabled: Federal Relay Service 1-800-877-8339

Merit System Principles

- Recruit, select, and advance on the basis of merit after fair and open competition.
- Provide equal pay for equal work; reward excellent performance.
- Maintain high standards or integrity, conduct and concern for the public interest.
- Use human resources effectively and efficiently.
- Retain or separate employees on the basis of their performance.
- Provide employees with effective training and education.
- Protect employees from reprisal for lawful disclosures.
- Protect employees from improper political influence.

12 Prohibited Personnel Practices

- **Generally stated, § 2302(b) provides that a federal employee authorized to take, direct others to take, recommend or approve any personnel action ***may not*:**

1. Discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
2. Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
3. Coerce the political activity of any person;
4. Deceive or willfully obstruct anyone from competing for employment;
5. Influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
6. Give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
7. Engage in nepotism (*i.e.*, hire, promote, or advocate the hiring or promotion of relatives);

12 Prohibited Personnel Practices

- **Continued:**

8. Engage in reprisal for whistle blowing;
9. Take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for: exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;
10. Discriminate based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant, or others; or
11. Take or fail to take, recommend, or approve a personnel action, if taking or failing to take such an action would violate a veteran's preference requirement; and
12. Take or fail to take a personnel action, if taking or failing to take action would violate any law, rule or regulation implementing or directly concerning merit system principles at 5 **U.S.C**. § 2301.

Freedom from Reprisal

Applicable Regulations

No person shall be subjected to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, or the Rehabilitation Act, or for participating in any stage of the administrative or judicial proceedings under those statutes.

- **29 CFR §1614.101(b)**

Elements of Reprisal Claim

- **First Element:**
  - Individual expressed opposition to discriminatory practice; or,
  - Individual participated in the discrimination complaint process
- **Second Element**:
  - Agency (Management) aware of protected activity.
  - The individual who the complainant alleges reprised against them must have knowledge of their protected activity.
- **Third Element**:
  - Agency must have taken an adverse action after the complainant engaged in the protected activity
  - Examples of Adverse Action: Denial of promotion, award, position; disciplinary action; negative evaluation or, harassment.
- **Fourth Element:**
  - Complainant must demonstrate a “Causal Connection” between the adverse action and the protected activity.

Elements of Proof for Whistleblower Reprisal

- To establish whistleblower reprisal, an employee must show:
  - Element One – A protected disclosure of information he or she reasonably believes to evidence: a violation of law, rule or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific damage to public health and safety
  - Element Two – A personnel action was taken, not taken or threatened.
  - Element Three – Those responsible for reprisal have actual or constructive knowledge of the protected disclosure
  - Element Four – The protected disclosure was a contributing factor in the personnel action.

Protected Activity:
Opposition to Discriminatory Practice

- Opposition to a discriminatory practice .
  - The anti-retaliation provisions make it unlawful to discriminate against an individual because s/he has opposed any practice made unlawful by Title VII, the ADEA, the EPA, or the Rehab Act.
  - A complaint amounts to protected opposition only if the individual explicitly or implicitly communicates a belief that the practice constitutes unlawful employment discrimination.
  - The opposition clause does not require the person be correct in their belief that the agency's employment practice they opposed actually violated Title VII, the ADEA, the EPA, and/or the Rehab Act.
  - The opposition clause protects the individual provided that they had a good faith and reasonable belief that a violation of the EEO statutes had or was occurring.

Protected Activity: Participation in the EEO Process

- Participating in the EEO process.
  - Title VII, the ADEA, the EPA, and the Rehab Act make it unlawful to discriminate against any individual because s/he has filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or litigation under any of the anti-discrimination statutes.
  - While the opposition clause applies only to those who protest practices that they reasonably and in good faith believe are unlawful, the participation clause applies to all individuals who participate in the EEO complaints process.
  - An agency can be found liable for retaliating against an individual for filing an EEO complaint regardless of the merits or reasonableness of the original complaint.

Retaliation for Engaging in Protected Activity

- A Federal agency may not retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal anti-discrimination or whistleblower protections laws listed above.
- If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the anti-discrimination law and whistleblower protection law sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

- Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal.
- If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation.
- Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

- **For further information regarding the No FEAR Act regulations:**
  - Refer to 5 CFR 724
  - EEO Office servicing your location
  - Website: https://www.donhr.navy.mil/NoFearAct.asp.
- **Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at:**
  - EEOC Website: http://www.eeoc.gov
  - OSC Website: http://www.osc.gov

Additional Information

ADR Web Site:

- http://adr.navy.mil (DON ADR Website)
- http://adr.navy.mil/training/whattoexpect.htm
- http://adr.navy.mil/regionaladrcoordinators.asp

Training Record Update

You have completed your annual requirement for No FEAR Training

Click here to send an email to the CHRO.

You will not receive a completion certificate but your training record will reflect completion of the No FEAR Training.